



# HYDRO COMPOSITES, L.L.C.

HIGH QUALITY FRP PRODUCTS

## TERMS AND CONDITIONS

1. **ACCEPTANCE:** This document (this "Agreement") constitutes an offer by Seller to sell the goods described herein (the "Goods") to Buyer. The offer may be accepted only on the terms and conditions stated in this Agreement. The terms and conditions of this Agreement shall apply to and govern the sale of the Goods from Seller to Purchaser. **Any additional or different terms and conditions proposed by Purchaser (whether written or oral) are hereby objected to and rejected and, as such, are of no force and effect.**

2. **PRICES:** Prices for the Goods shall be those set forth in Seller's price lists or in written quotations in effect at the time of receipt of order. Price lists are subject to change without notice. Written quotations shall expire within thirty (30) days from the date of their issuance unless terminated earlier by Seller upon notice to Purchaser. Prices do not include any taxes imposed by any governmental authority whatsoever, which taxes shall be paid by Purchaser in accordance with Section 3.

3. **TAXES:** The amount of all present and future sales, excise, or other taxes applicable to the Goods shall be added to the purchase price and shall be paid by Purchaser, or in lieu thereof, Purchaser shall provide Seller with a tax exemption certificate acceptable to the taxing authorities. Notwithstanding the above, if Seller is required to pay such taxes, Purchaser shall reimburse Seller for such amounts.

4. **ADDITIONAL COSTS/EXPENSES:** Purchaser shall pay all added costs and expenses incurred by Seller as a result of delays in receiving details, specifications, and other pertinent information from Purchaser or because of changes requested by Purchaser. Purchaser shall pay an added storage cost of \$50.00/ day for orders that have not been approved for shipment commencing 45 days after notification of completion of the order.

5. **PAYMENT:** Purchaser shall pay to Seller 50% of the full purchase price of the Goods with acceptance of purchase order and approval drawings. (Invoice will be processed at receipt of the first drawing approval(s) on a product or project.) The balance will be billed at the time of shipment with payment due upon receipt of the invoice, as evidenced by Seller's invoices to Purchaser. Certain qualified accounts with approved credit may remit the balance payment Net 30 days from date of invoice. HC will provide tentative production schedule on projects with monthly billing upon request. Proof of completion (two days before monthly billing) and insurance will be provided on completed equipment. Notwithstanding the due dates above, Seller reserves the right to require Purchaser to pay the purchase price in full at other times or in another manner or make other adequate assurances of payment satisfactory to Seller when, in Seller's sole opinion, Purchaser's financial condition or other grounds warrant such action. Purchaser hereby agrees to pay all of Seller's costs of collecting any amounts not paid when due, including without limitation reasonable attorney fees.

6. **SHIPMENT/DELIVERY:** All deliveries shall be FOB Seller's facility, Stockdale, TX. Methods and routes of shipment, unless Seller specifies in writing otherwise, shall be accepted as chosen by Seller in Seller's sole discretion. Purchaser shall pay all costs of shipment. Delivery to the carrier shall constitute delivery and passage of title to Purchaser, and risk of loss shall pass to Purchaser concurrently with passage of title. Seller will use reasonable diligence to meet scheduled shipment dates and times. Such dates and times are the best possible estimates, and not guarantees, of when the Goods will actually be shipped. In no event shall Seller be liable for any losses or damages of any kind due to delays in shipment, nor may Purchaser cancel its contract because of any such delay.

7. **CANCELLATION:** Cancellations of orders, once placed will be permitted up to the date of production. All cancelled orders may be subject to cancellation charges.

8. **RETURN OF GOODS:** The Goods are not returnable or exchangeable unless they are deemed by Seller to be a non-conforming product.

9. **FORCE MAJEURE:** Seller shall not be liable for any delay in shipment, failure to deliver, or any other nonperformance of the Agreement directly or indirectly resulting from or contributed to by any cause or circumstance beyond Seller's control, including, without limitation, force majeure, accident to Seller's plant or equipment, riots, wars, terrorism or national emergencies, labor disputes of every kind however caused, embargoes, nondelivery by suppliers, inability to obtain supplies through normal sources of supplies, delays of carriers or postal authorities, governmental restrictions, prohibitions, or diversions. In such event, Seller's time for performance under this Agreement shall be extended for a period of time not less than the period of such delay, or at Seller's option, Seller may rescind this Agreement upon ten (10) days' written notice to Purchaser. Furthermore, Seller may allocate its production and deliveries among its customers.

10. **UNAVAILABILITY OF PARTS/MATERIALS:** Seller shall not be liable for any loss or damage caused by the unavailability of parts or materials.

11. **WARRANTY AND WARRANTY LIMITATIONS:** Except as otherwise provided herein, Seller warrants that the Seller Goods (as defined below) are free from defects in material and workmanship under normal use for two years after the date of shipment. If Purchaser notifies Seller within such two year period of any claimed defect in the Seller Goods, and after appropriate tests and inspection by Seller, such Seller Goods are found not to be in conformity with this warranty, Seller shall at its sole option and expense, and as Purchaser's sole remedy, either repair or replace the defective Seller Goods. This warranty applies only to the original purchase price and is good only when the total payment for the product has been received. The limited warranty (expressed or implied) applies only to the original purchaser. Purchaser shall not return the Seller Goods to Seller, however, without Seller's prior written authorization. Any repairs made by Purchaser or any other person or entity without Seller's prior written authorization will render this warranty void. "Seller Goods" means all Goods except those Goods sold by Seller as a plumbing or electrical component of the Goods, such as motors, fans, controls or other, similar components which are separately labeled and warranted by the component manufacturer, and which are hereinafter described as "Component Goods".

Seller makes no warranty:

(1) concerning the compliance of the Seller Goods with any local or state laws or regulations, including without limitation electrical, building, or other codes or requirements. Purchaser agrees to accept full responsibility for complying with such laws, regulations, codes, and requirements.

(2) against any defect or damage incurred in transit.

(3) concerning (and does not assume in this or any other document) any obligation or liability in connection with patent or copyright infringement suits brought against Purchaser with respect to the Seller Goods, which were designed by Purchaser.

(4) as to the durability and quality of, or other matter relating to, any materials used in the Seller Goods.

Other than as set forth in this Section, Seller makes no warranty, express or implied, with regard to the Seller Goods.

**SELLER'S WARRANTY HEREUNDER IS LIMITED TO REPAIRING OR REPLACING (AT SELLER'S SOLE OPTION) ANY SELLER GOODS THAT ARE PROVED TO BE DEFECTIVE, AND SELLER SHALL IN NO EVENT HAVE ANY LIABILITY FOR ANY OTHER DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION PAYING PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS KNOWN TO SELLER. SELLER'S WARRANTY FOR THE SELLER GOODS IS EXCLUSIVE AND IS IN LIEU OF ANY**

**OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Seller makes no warranty, expressed or implied, with regard to Component Goods. Seller does, however, assign and transfer to Purchaser any and all warranties of the manufacturer with regard to Component Goods, and Purchaser's sole remedy with respect to defects in Component Goods shall be such manufacturer's warranty.

12. **GENERAL PROVISIONS:** Any cause of action concerning the transaction reflected by this Agreement, except Seller's action to recover its damages for Buyer's breach or Seller's costs and attorneys fees in connection therewith, must be commenced within ninety (90) days after such causes of action accrue. Seller has the right to correct any stenographical or clerical errors in any of the writings issued by it. The terms and conditions stated herein constitute the complete and exclusive statement of the terms and conditions of the sale of the Goods hereunder, and there are no other promises, conditions, understandings, representations, or warranties of any kind. This Agreement may be modified only by a writing signed by both Seller and Purchaser. Seller's failure to enforce any right hereunder will not be construed as a waiver of its right to performance in the future. Purchaser shall not assign its obligations hereunder without Seller's prior written consent.

13. **GOVERNING LAW:** The transaction reflected by this Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Texas, and the parties consent to the jurisdiction of the Texas courts over this Agreement and over the parties in any proceeding to enforce this Agreement.

14. **SECURITY INTEREST:** Until the full purchase price has been paid, Seller reserves a Purchase Money Security Interest under the Uniform Commercial Code (the "UCC") in the Goods and in all products and proceeds thereof. Purchaser shall execute such documents as Seller may require, including, but not limited to, one or more Financing Statements. Purchaser agrees and hereby appoints Seller as its attorney-in-fact to do, at Seller's option, all acts and things Seller may deem desirable to perfect and continue to perfect the Purchase Money Security Interest granted hereby, including Seller's authority to file Financing Statements naming Purchaser as debtor and Seller as secured party without Purchaser's signature in those states where such filing are permitted, and to sign Purchaser's name thereto where required. At Seller's option, there shall be no delivery of any of the Goods ordered hereunder until all documents necessary to perfect the Purchase Money Security Interest have been executed to Seller's satisfaction. All costs and expenses of Seller, including attorneys' fees for the preparation and recordation of documents deemed necessary and appropriate to establish and perfect the Purchase Money Security Interest, shall be Purchaser's responsibility and shall be immediately payable by Purchaser upon receipt of Seller's invoice for same. This Purchase Money Security Interest is in addition to and not in lieu of any security interest of Seller under Article 2 of the UCC.

15. **INDEMNIFICATION:** Purchaser hereby agrees to hold harmless and indemnify Seller and its agents, employees, directors, and officers from any and all expenses, losses, and damages, including legal fees, incurred as a result of claims by third parties against Seller: (a) due to Purchaser's breach of this Agreement or (b) resulting from Seller's use of any information (such as drawings, descriptions, models, or pictures) furnished by Purchaser to Seller and related to the design, manufacture, or distribution of the Goods (e.g., claims of patent infringement, unfair trade practices or competition, or appropriation of proprietary information).

16. **INSTALLATION, TRAINING, ADDITIONAL SERVICES:** Unless otherwise agreed in writing, the Goods shall be installed by and at the expense of Purchaser. Any training, equipment operation, or other support services will be provided only with separate quote and purchase order.

17. **CONFIDENTIAL INFORMATION:** Purchaser shall not disclose any confidential information of Seller, directly or indirectly, nor use such information in any way, without Seller's prior written consent. All files, records, documents, drawings, specifications, and similar items, whether prepared by Seller or otherwise coming into Seller's possession, shall remain Seller's exclusive property, unless otherwise agreed to in writing by Seller.